

LEGAL



Emergency Powers for Condominiums

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The emergency powers section of the Condominium Act has been the subject of much attention and debate over the past two years as the COVID-19 pandemic required boards to attempt to balance the interests and rights of owners against safeguarding its residents. The amendments to the statute are summarized as follows:

The board can use emergency powers in response to damage or injury caused by or anticipated in connection with an emergency, as defined in section 252.34(4), Florida Statutes. The term “emergency” is now defined in section 252.34(4), Florida Statutes, as any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results in or may result in substantial injury or harm to the population or substantial damage to or loss of property.

The board may exercise its emergency powers to conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part by tele-

phone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable, including publication, radio, U.S. mail, the Internet, electronic transmission, public service announcements, and conspicuous posting on the condominium property or association property or any other means the board deems reasonable under the circumstances.

The previous statute included a number of emergency powers related to implementing a disaster plan, determining whether the condominium property can be safely inhabited or occupied, mitigating further damage, and contracting for the items or services necessary to prevent further damage to the condominium property. The new law amends these provisions by adding language which clarifies that such powers can be used to address issues that may arise because of a pandemic or a public health emergency. For instance: The board may implement an emergency plan before, during or following the event for which a

state of emergency is declared. The previous statute only specifically mentioned a “disaster plan.”

The board may rely on the advice of emergency management officials or public health officials or licensed professionals otherwise available to the board to determine any portion of the condominium property or association property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons. The previous statute did not mention “public health officials”.

The board may mitigate injury or contagion and may contract, on behalf of any unit owner or owners, for items or services which are necessary to prevent further injury or contagion, including, without limitation, sanitizing the condominium property or association property. The previous statute only mentioned mitigating “damage” and contracting for items or services necessary to prevent further “damage.”

The emergency powers are lim-

ited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners’ family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs. This means (and has meant) that a board’s emergency powers may extend beyond the expiration of the state’s state of emergency depending on the circumstances in a particular community.

Mark D. Friedman, B.C.S. is recognized as a Board Certified Specialist in Condominium and Planned Development Law by the Florida Bar. This article is intended for educational purposes only and is not meant as legal advice. Before implementing emergency powers your community should consult with your association legal counsel to ensure that you are properly implementing such authority. Mr. Friedman may be reached at MFriedman@becker-lawyers.com.



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